

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FILE: B-185255

DATE: November 28, 1975

MATTER OF: Commercial Metals Company

## DIGEST:

Purchaser whose bid price for item 2 of \$0.1709 per pound was 244 percent greater than next highest bid of \$0.0698 per pound and 170 percent greater than current market appraisal of \$0.10 per pound may have sales contract reformed by deleting item since contracting officer was on constructive notice of possibility of mistake in bid because of wide price variations which are not normally encountered in sale of scrap, and should have requested verification of bid before acceptance.

This decision involves a mistake in bid by Commercial Metals Company (Commercial) alleged after an award to it of item 2 (surplus magnetic and nonmagnetic stainless steel), under sales contract No. 41-5495-202. The Acting Assistant Counsel, Headquarters, Defense Supply Agency, in concurrence with the Defense Property Disposal Service, recommends the reformation of the sales contract by deleting item 2 therefrom. The award on item 2, described as 75,000 pounds of magnetic and nonmagnetic stainless steel, was made to Commercial on July 3, 1975, at their bid price of \$0.1709 per pound. By letter postmarked July 2, 1975, and received by the contracting officer on July 7, 1975, Commercial alleged a mistake in its bid for item 2. Commercial alleged that the mistake occurred during their prebid inspection when the material offered under item 2 was confused with similar material offered under item 13 (22,600 pounds of nonmagnetic stainless steel scrap).

Generally, when a bid has been accepted, the bidder is bound to perform the resultant contract and must bear the consequences of its unilateral mistake. Saligman et al. v. United States, 56 F. Supp. 505 (E.D. Pa. 1944). However, our Office has consistently allowed the rescission of such a contract where a contracting officer having actual or constructive notice that the bidder made a mistake neglects to verify the bid. 37 Comp. Gen. 685 (1953); Ubique Ltd., B-180610, August 12, 1974, 74-2 CPD 90.

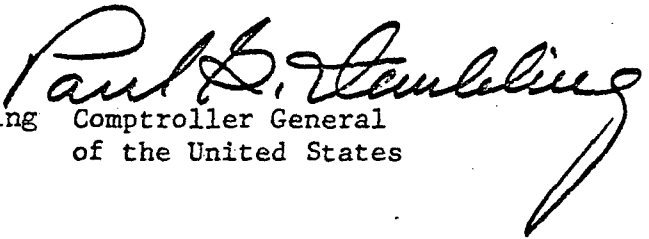
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This Office has recognized that wide price variations normally are not encountered in the sale of scrap metals because of the established market for this material and the limited uses to which it may be put. See 49 Comp. Gen. 199, 202 (1969). Consequently, we have held that "where a mistake in bid is alleged on the sale of Government scrap, and where there are substantial disparities between the high bid and the next high bid, and the high bid and the current market appraisal, and especially where there is also a comparatively narrow range among the lower bids, the sales contracting officer is on constructive notice of a possible mistake in the high bid and should request verification of the bid prior to award." Sitkin Smelting and Refining, Inc., supra; Acme Refining-Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113; M & M Metals, Inc., B-180128, January 29, 1974, 74-1 CPD 40; B-174900, March 7, 1972.

In the present case, the high bid for the scrap metal denominated as item 2 varied substantially from both the next high bid and the current market appraisal. The high bid, \$0.1709 per pound, was 244 percent greater than the second high bid, \$0.0698 per pound, and was 170 percent greater than the current market appraisal established prior to bid opening, \$0.10 per pound. Moreover, the range of \$0.10109 per pound between the second highest of the three bids and the high bid was over seven times as great as the range of \$0.01421 per pound between the second highest bid and the third highest bid.

We conclude that the contracting officer was on constructive notice of the possibility of a mistake in the bid by Commercial and should have requested Commercial to verify its bid.

Accordingly, the award for item 2 in sales contract No. 41-5495-202 may be rescinded without liability to Commercial as administratively recommended.

  
Acting Comptroller General  
of the United States